

**AMENDMENTS TO THE CLAIMS:**

The following listing of claims replaces all prior listings, and all prior versions, of claims in the application.

**LISTING OF CLAIMS:**

1. (Currently amended) A ~~non-aqueous secondary~~  
secondary battery comprising:
  - a positive electrode,
  - a negative electrode, and
  - electrolytic solution, which is charged or discharged by repeating a reaction of intercalating and deintercalating ions at said positive electrode and said negative electrode, respectively, whereinsaid negative electrode comprises graphite powder having a crystalline structure, and having a fraction of a rhombohedral structure, of the crystalline structure, equal to or less than 10% by weight and a particle size equal to or smaller than 100  $\mu\text{m}$ .
2. (Original) A non-aqueous secondary battery as claimed in claim 1, wherein said graphite powder has a fraction of a hexagonal structure equal to or more than 90% by weight.
3. (New) A non-aqueous secondary battery as claimed in claim 1, said graphite powder having been formed from prior graphite powder, having said particle size, with a fraction of rhombohedral structure greater than 10% by weight, and which prior graphite powder has been treated to form said graphite powder with said particle size and having said fraction of a rhombohedral structure equal to or less than 10% by weight.

4. (New) A non-aqueous secondary battery as claimed in claim 1,  
wherein the secondary battery is a lithium non-aqueous secondary battery.
5. (New) A lithium non-aqueous secondary battery as claimed in claim 4,  
wherein the electrolyte solution is a mixed solvent of ethylene carbonate with any  
one selected from the group consisting of dimethoxyethane, diethylcarbonate,  
dimethylcarbonate, methylethylcarbonate,  $\gamma$ -butyrolactone, methylpropionate and  
ethyl propionate, and a lithium salt.
6. (New) A non-aqueous secondary battery as claimed in claim 1,  
wherein said graphite powder has substantially completely the crystalline structure.